

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CALVIN SOUTHERLAND,

Defendant-Appellant.

UNPUBLISHED

February 2, 2001

No. 217103

Oakland Circuit Court

LC No. 98-159934-FC

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of six counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), arising out of the sexual molestation of his nine-year-old daughter. The trial court sentenced defendant to six concurrent terms of twenty-two to fifty years in prison. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court clearly erred by denying his pretrial motion to suppress his inculpatory statement made to a police detective. Defendant contends that the police statement was involuntary because he made the statement under the mistaken belief that he would not be incarcerated if he gave an inculpatory statement. Although we must independently examine the entire record, we will affirm the trial court's decision absent clear error. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000); *People v Sexton*, 458 Mich 43, 68; 580 NW2d 404 (1998). We find no clear error in this case.

Detective Carol Liposky spoke with defendant on the telephone and arranged for him to come to the police station for an interview. At the *Walker*¹ hearing, Detective Liposky testified that she informed defendant that he was not under arrest and was free to end the interview and leave at any time. Defendant was cooperative throughout the interview, and he described several instances of sexual assault involving his daughter. Defendant claims that his statement was induced by promises that he would not go to jail. However, Detective Liposky insisted that she did not promise defendant anything in exchange for his statement.

¹ *People v Walker (On Rehearing)*, 374 Mich 331, 337-338; 132 NW2d 87 (1965).

The trial court, after hearing the testimony of both defendant and Detective Liposky, chose to believe the latter. The trial court concluded that no promises of leniency were made to defendant. We defer to the trial court's determination of credibility. *Sexton (After Remand)*, *supra* at 752; *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). In any event, a promise of leniency is but one factor to consider; it does not render a confession inadmissible per se. *Id.* at 119-120. Defendant has failed to show that his statement was involuntary. Consequently, the trial court's decision to deny defendant's motion to suppress was not clearly erroneous.

Defendant next challenges the sufficiency of the evidence to support his convictions, arguing that the victim's testimony was incredible because it was inconsistent with regard to the chronology of alleged instances of sexual abuse. Defendant's argument admittedly hinges on the suppression of his inculpatory statement. Because we have concluded that the statement was properly admitted, defendant's challenge to the sufficiency of the evidence must fail. In any event, any inconsistencies in the victim's testimony would not render her testimony insufficient to support defendant's convictions. See *People v Naugle*, 152 Mich App 227, 235-236; 393 NW2d 592 (1986). It was for the jury to weigh the evidence, resolve the questions of fact, and determine the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974).

Accordingly, taken in a light most favorable to the prosecution, the prosecution presented sufficient evidence for the jury to find that all the elements of first-degree criminal sexual conduct were proven beyond a reasonable doubt. *Wolfe*, *supra* at 515.

Lastly, defendant argues that his six concurrent terms of twenty-two to fifty years' imprisonment are disproportionately harsh. We find no abuse of discretion in the trial court's sentences, because they are proportionate to the seriousness of the circumstances surrounding both the offenses and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999). The minimum term is within the recommendation of the sentencing guidelines and, therefore, is presumptively proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Defendant has not demonstrated unusual circumstances to overcome that presumption. *Id.* Defendant breached his young daughter's trust and repeatedly subjected her to sexual abuse. Defendant's own difficult childhood does not excuse or mitigate his criminal behavior. His sentences do not violate the principle of proportionality and we cannot conclude that the trial court abused its discretion in sentencing defendant.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Hilda R. Gage